

### Remarks/Arguments

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed August 20, 2008. Claims 52 and 72 have been amended. Currently, claims 5-31, 52, 54-72, and 74-95 remain pending of which claims 5-31 were previously withdrawn. Claims 52, 54-72, and 74-95 have been rejected. Favorable consideration of the following remarks is respectfully requested. This paper is being filed with a Request for Continued Examination.

### Claim Rejections – 35 USC § 102

Claims 52, 54, 55, 57-63, 70-72, 74, 75, 77-83, and 90-95 were rejected under 35 U.S.C. 102(e) as anticipated by *Wholey et al.* (U.S. Patent No. 6,652,554). Applicants respectfully traverse this rejection. To anticipate a claim, the reference must teach every element of the claim. See M.P.E.P. §2131.01.

To advance prosecution in this case Applicants have amended independent claims 52 and 72. Amended claims 52 and 72 now recite a filter further comprising a first tapered portion and a second tapered portion, the first tapered portion defining a first included angle, and the second tapered portion extending proximally from a proximal portion of the first tapered portion, the second tapered portion defining a second included angle greater than the first included angle; and wherein the first tapered portion extends at the first included angle for a substantial length of the first tapered portion, and the second tapered portion extends at the second included angle for a substantial length of the second tapered portion. The filter disclosed by *Wholey et al.* does not appear to teach or suggest a first and second tapered portion defining a first and second angle, wherein the first and second tapered portions extend at the first and second angles for a substantial length of the first and second tapered portions respectively.

As a matter of a fact, given the hemispheric shape of the filter described by *Wholey et al.*, if one divides the filter in two tapering portions the number of tangential angles defined by each portion is infinite. Furthermore, since the number of tangential angles is infinite, none of the single tangential angles can extend for a substantial portion of the filter portion as recited in independent claims 52 and 72.

Moreover, the claimed filter has multiple properties that are not present nor suggested in the *Wholey et al.* reference. For example, the claimed filter directs emboli and other particles towards the first portion of the filter; allowing the second portion to remain relatively free of particles during medical procedures. This allows blood to freely flow even if a substantial amount of particles have accumulated in the first portion.

For these and other reasons, claims 54, 55, 57-63, 70, 71, 74, 75, 77-83, and 90-95, which depend from independent claims 52 and 72 respectively, are believed to be not anticipated by *Wholey et al.* and Applicants respectfully request that the rejections be withdrawn.

#### **Claim Rejections – 35 USC § 103**

Claims 56 and 76 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wholey et al.* (U.S. Patent No. 6,652,554) in view of *Daniel et al.* (U.S. Patent No. 5,814,064). After careful review, Applicant must respectfully traverse this rejection.

"All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP § 2143.03). As discussed previously, nowhere does *Wholey et al.* appear to disclose a filter further comprising a first tapered portion and a second tapered portion, the first tapered portion defining a first included angle, and the second tapered portion extending proximally from a proximal portion of the first tapered portion, the second tapered portion defining a second included angle greater than the first included angle; and wherein the first tapered portion extends at the first included angle for a substantial length of the first tapered portion, and the second tapered portion extends at the second included angle for a substantial length of the second tapered portion as recited in independent claims 52 and 72. Claims 56 and 76 depend from claims 52 and 72 respectively and add significant further limitations thereto. Furthermore, nowhere does *Daniel et al.* appear to remedy the shortcomings in the *Wholey et al.* reference. Therefore, *Wholey et al.* in view of *Daniel et al.* does not appear to teach all the claim limitations, as is required to establish a *prima facie* case of obviousness, and Applicants respectfully request withdrawal of the rejections.

Claims 64-69 and 84-89 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wholey et al.* (U.S. Patent No. 6,652,554), as applied to claims 52 and 72, in view of *Mazzocchi et al.* (U.S. Patent No. 6,605,102), hereinafter *Mazzocchi et al.*

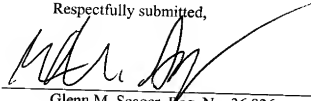
After careful review, Applicant must respectfully traverse this rejection.

Claims 64-69 and 84-89 depend from claims 52 and 72 and add significant limitations thereto. *Wholey et al.* does not appear to teach the filter geometry required by claims 52 and 72 as discussed in detail above. *Mazzocchi et al.* does not appear to remedy the absence of the required filter geometry in *Wholey et al.* Therefore, *Wholey et al.* in view of *Mazzocchi et al.* does not appear to teach all the claim limitations, as is required to establish a *prima facie* case of obviousness and Applicants respectfully request that the rejections be withdrawn.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Date: Dec. 15, 2009

  
Glenn M. Seager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
Tel: (612) 677-9050